

APPEAL PROCEDURES FOR USDA

CHILD AND ADULT CARE FOOD PROGRAM



In accordance with federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability.

APPEAL PROCEDURES FOR USDA NUTRITION PROGRAMS ADMINISTERED BY HEALTH & NUTRITION

REQUIREMENTS

Each State agency shall establish an appeal procedure to be followed by an institution requesting a review of adverse action taken by Health & Nutrition Programs (HNP). The procedures contained in the following sections comprise the official hearing procedures to be followed for Hearing relative to Child and Adult Care Food Program (CACFP). The review/hearing procedures outlined below apply to both to sponsoring organizations and institutions.

REASONS FOR REQUESTING A REVIEW

The Appeals and Hearing Section of the Office of Policy and Legal Service (OPLS) has been delegated the responsibility for conducting reviews of institutions aggrieved by the following actions:

CACFP	1	Denial of a new or renewing institution's application for participation.
CACFP	2	Denial of an institution/sponsoring organization's application on behalf of a facility/site for participation.
CACFP	3	Proposed termination of an institution's agreement.
CACFP	4	Proposed disqualification of a responsible principal or responsible individual.
CACFP	5	Suspension of an institution's participation.
CACFP	6	Denial of an institution's application for start-up or expansion payments.
CACFP	7	Denial of a request for an advance payment.
CACFP	8	Recovery of all or part of an advance in excess of the claim for the applicable period. The recovery may be through a demand for full repayment or an adjustment of subsequent payments.
CACFP	9	Denial of all or a part of an institution's claim for reimbursement (except for a denial based on a late submission which is not an appealable issue.)
CACFP	10	Denial by HNP to forward to FNS an exception request by an institution for payment of a late claim or a request for an upward adjustment to a claim.
CACFP	11	Demand for the remittance of an overpayment.
CACFP	12	Any other section of HNP affecting the participation of an institution in the program or the institution's claim for reimbursement.
CACFP	13	Denial of a Food Service Management Company's (FSMC) application for a site.

CACFP	14	Denial of a FSMC application for registration.
CACFP	15	The revocation of a FSMC's registration.

NOTE: In the event that the hearing process was not invoked or the State agency's action was upheld, requests for repayment by Health and Nutrition Programs, do not constitute grounds for review/hearing.

INSTITUTION'S RIGHT TO APPEAL

At the time of any adverse action, the institution/sponsoring organization must be advised in writing by notice of action, sent certified mail, return requested and must contain the following:

CACFP	1	The basis for the adverse action.
CACFP	2	A statement indicating the right to appeal.
CACFP	3	The address to which to route the appeal.
CACFP	4	A copy of the appeal procedures.
CACFP	5	The right to legal counsel or to be represented by another person.
CACFP	6	The right to file written information and the right to request a hearing (appellant must state specifically if he/she wishes to have a hearing).
CACFP	7	The right to file written information to be considered by the Review/Hearing Official within 30 calendar days from the date the notice of action.

REQUESTING THE HEARING

A request for review/hearing must be submitted in writing to the Appeals and Hearings Section, the Office of Policy and Legal Services, P.O. Box 1437, Slot N-401, Little Rock, Arkansas 72203, within the timeframes set below:

CACFP	The written request for review/hearing must be filed no later than 15 calendar days from the date of receipt of the Notice of Action (established by the Certified Mail Receipt).
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DENIAL OR DISMISSAL OF REQUEST FOR REVIEW

The Appeals and hearings Section will not deny or dismiss a request for review except under the following circumstances:

1	The request was not received within the specified timeframe for requesting review.
2	The request was withdrawn, in writing, by the appellant or its representative.

When the appellant has requested a hearing in lieu of a review of written information and fails to appear for the scheduled hearing, the decision will be based solely on the written information unless the appellant requests and is granted a rescheduling date by the Appeals and Hearings Section prior to the hearing date. There is no extension of timeframes granted in completing a final administrative action on a case and due to the stringent timeframe mandated by Federal Regulations, a hearing will not be rescheduled except in the most unusual circumstances. Discretion for rescheduling a hearing lies solely with the Appeals and Hearings Section.

The Administrative Review Process

BEGINNING THE ADMINISTRATIVE REVIEW PROCESS

When a request for review is received, the Appeals and Hearings Section will request the Administrator or Health and Nutrition Programs to verify whether or not the request has been filed timely. In not, the appellant or representative will be notified by letter from the Appeals and Hearings Section that the request for review is being denied.

THE ADMINISTRATIVE REVIEW / HEARING FILE

Upon notice by the Appeals and Hearings Section that a request for review has been filed and after a determination that the request was timely, Health and Nutrition Programs will prepare a copy and forward the documentation to Appeals and Hearings Section of the following:

1	The Notice of Action.
2	All documentary evidence used to support the Notice of Action upon which the request for review is based.
3	A complete summary of the action taken, the basis for the action and the Child and Adult Day Care regulation(s) used in the decision to take adverse action.

ACKNOWLEDGEMENT OF RECEIPT OF REQUEST FOR REVIEW

CACFP Within ten (10) calendar days of the receipt for review of the adverse action in the Nutrition Programs the Appeals and Hearings Section must acknowledge the receipt of the request for either a review of the written information or a hearing.

STATUS OF ADVERSE ACTION DURING REVIEW / HEARING PROCESS

CACFP The action taken by the Health and Nutrition Programs remains in effect during the appeal process. However, unless participation has been suspended, the institution may continue to participate and receive program reimbursement for eligible meals served and allowable administrative costs incurred until its administrative review is completed.

PROCEDURE RESULTING FROM REQUEST FOR REVIEW OF WRITTEN INFORMATION

An appellant is afforded the right to an impartial review of the record and may submit written information to be considered by the Review Official.

PROCEDURE RESULTING FROM REQUEST FOR A HEARING

An appellant may choose to attend a hearing before an impartial hearing official and be represented by legal counsel at the appellant's expense.

SUBPOENA OF WITNESS

With the Acknowledgement of Receipt of Request for Review is sent to the appellant who has requested a hearing, he/she will be sent a form on which to subpoena witnesses and a copy of the Hearing file. This packet of information is sent certified mail, return receipt requested.

SCHEDULING THE HEARING

For CACFP, the Hearing must be scheduled 10 calendar days in advance. The advance written notice of the time and place of the Hearing is sent by certified mail, return receipt requested.

THE HEARING OFFICER

The Appeals and Hearing Section will designate all Hearing Officers. The Hearing Officer must not have any personal interest in the case or have had any involvement in the contested action that resulted in the request for a Hearing.

CONDUCT OF THE HEARING

The Hearing will be conducted by a designated Hearing Official. The appellant may be represented by legal counsel or a designated representative. Health and Nutrition Programs will be represented by legal counsel if the appellant has legal counsel or a designated representative.

The representative from Health and Nutrition Programs will explain the basis for the adverse action and present any documentation (including witnesses) to support this action.

The appellant or representative will be given the opportunity to present witnesses, advance arguments, offer additional evidence and to question or refute any testimony or evidence. If the appellant is unable to present his/her evidence in a logical manner, the Hearing Official will assist. All parties will be given the right to cross examine witnesses. Questioning of all parties will be confined to the issue(s) involved. The Hearing Official has the Right to question participants any time during the proceedings.

THE REVIEW / HEARING DECISION

For CACFP prompt, definitive and final administrative action must be taken within 60 days of receipt of a request for a review/hearing. The hearing decision is based upon documentary evidence at the hearing, if conducted. This timeframe is an administrative requirement for the State agency and may not be used as a basis of overturning the State agency's action if a decision is not made within the specified timeframe.

The Review/Hearing Officer must make a determination based solely on the information provided by the State agency, the institution and the responsible principals and responsible individuals and based on Federal and State Laws, regulations, policies, and procedures governing the program. The decision will be signed by the Administrator, Appeals and Hearing Section or a designated representative. The decision represents final administrative action by the Department of Human Services (DHS) and is binding by the Health and Nutrition Programs of the Division of Childcare and Early Childhood Education. The decisions will be sent certified mail, return receipt requested.

NOTIFICATION OF HEARING DECISIONS

Once a hearing decision is rendered, both the appellant and Health and Nutrition Programs will be notified in writing of the decision, sent by certified mail, return receipt requested. Health and Nutrition Programs will notify the Appeals and Hearing Section within 10 days of any action by this Unit as a result of the hearing decision.

JUDICIAL REVIEW

Appellants not satisfied with an Administrative Hearing decision have the right to pursue Judicial Review through the Administrative Procedure Act.

A petition must be filed in the Circuit Court of the County of residence of the Petitioner or in Pulaski within 30 days from the date the Administrative Hearing decision was received. Copies of the Petition are served to DHS and other parties of record by personal delivery mail.

Within 30 days from the date of service of the petition of DHS (or additional time granted by the Court not to exceed 90 days total), the Office of Policy and Legal Service must transmit to the Court the original or a certified copy of the entire record of the Hearing under review.

Judicial Review is conducted by the court without jury and is confined to the record.